IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIFTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 3631 of 2005

Between:

Mr.Syed Moulali, S/o.Syed Fakruddin, aged 50 years,

Occ: District Minorities Welfare Officer (Under Suspension)

Chittor District

..... PETITIONER

AND

1. Government of Andhra Pradesh, rep. By the Principal Secretary

to Government, Minorities Welfare (M&R) Department, Secretariat Buildings, Hyderabad

2. The Vice Chairman and Managing Director, A.P. State Minorities Finance

Corporation Ltd., Hyderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of a Writ of Certiorari calling for the records and quash the impugned proceedings of the first respondent in G.O.Rt.No.47, dated 8.2.2005 as highly illegal, arbitrary, violative of principles of natural justice, and without jurisdiction and to consequently direct the 1st respondent herein to forthwith reinstate the petitioner into service basing on the report of the audit team, dated 12.8.2004.

Counsel for the Petitioner: MRS.S.NANDA

Counsel for the Respondent No.1: GP FOR SOCIAL WELFARE

Counsel for the Respondent No.2: Mr. K.Ramanujachari

The Court, at the stage of admission, made the following :

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ORAL ORDER:

This writ petition is filed challenging the proceedings issued by the 1st respondent in G.O.Rt.No.47, dated 8.2.2005.

Heard the learned counsel for the petitioner and the learned Government Pleader for Social Welfare and perused the material on record.

The learned counsel for the petitioner has vehemently contended that the 2nd respondent constituted an audit team for ascertaining the irregularities said to have been committed in disbursing loan of the A.P. State Minorities Finance Corporation Limited, Kadapa. Thereafter, the audit team conducted a preliminary enquiry and submitted a report to the 2nd respondent stating that there is no variation in the balance of funds available and the actual balance available at Branch Office, Kadapa in various banks and hence, the 1st respondent, without any further material, passed the impugned order and there is no *prima facie* case to show the involvement of the

petitioner with regard to the variation of the amount. Hence, she prays to set aside the same.

On the other hand, the 1st respondent filed a detailed counter stating that the impugned proceedings were based upon not only the proceedings dated 25.6.2004 of the Vice Chairman and Managing Director, but also the material available on record and were taken into consideration before placing the petitioner under suspension and therefore, the suspension order does not suffer from any legal infirmities so as to call for interference by this Court.

In the impugned proceedings, it is stated that an amount of Rs.14,33,315/- was unaccounted with reference to the balance available with the bank as well as the acquittance register maintained and thus, there is variation of Rs.15,994/- in between the funds released by the Corporation and the funds disbursed to 3,740 beneficiaries as per the acquittance register. No doubt, the audit team consisting of three members conducted a preliminary enquiry stating that two cheques instead of being shown as a clearing, they were wrongly shown as withdrawal by the Rayalaseema Grammena Bank, Kadapa. With regard to the third irregularity, it was a deposit but not withdrawal. Considering the material available on record, the audit team came to the conclusion that there is no variation of the balance in the funds and the actual balance available at the Branch Office of Kadapa in various banks.

Based on the findings of the audit report, the learned counsel for the petitioner has contended that there is no provision or *prima facie* case to place the employee under suspension. That proposition was laid down in **STATE OF KERALA Vs K.C. GEORGE** wherein a Division Bench of Kerala High Court held to the following effect:

> *"the disciplinary proceedings is contemplated only when the authority concerned is satisfied that there is a prima facie case for taking such action."*

To the same effect, she relied upon another decision reported in **R.C. SOOD Vs. HIGH COURTOF RAJASTHAN** wherein it is held as

under:

> *"In the absence of material on record to show that the change was made by the petitioner and none else, the change in the original draft being in an ink different from that used by the petitioner elsewhere in the same draft and there being no initial at the place of change and further, in absence of anything to show any of the candidates benefited by the change to be connected with the petitioner in any manner, the view taken by the High Court and the consequent suspension of the petitioner, held, arbitrary."*

The learned single Judge of this Court also took the same view in the decision reported in **V. NAGESWAR RAO Vs. OSMANIA UNIVERSITY** wherein it is observed thus:

> *"No prima facie evidence connecting the petitioner to the alleged fraud played by the students and the employees— Suspension cannot be ordered."*

There is no doubt about the proposition of law laid down in various decisions as aforementioned that without there being a *prima facie* material, an employee cannot be placed under suspension.

The 1st respondent-Government not only take into consideration the proceedings of the 2nd respondent, dated 25.6.2004 but also, after careful consideration of the material available on record, came to the conclusion that it is the petitioner who was responsible for unaccounted amount of Rs.14,33,315/-. The Vigilance Report, dated 28.5.2004 would go to show that the officers found responsible for the above state of affairs in identification of beneficiaries, sanction and disbursement of loans and maintenance of registers and bank accounts are Sri Sk.Jamir Ahmed, the then Development Officer, Sri Sd. Maulali, the then DMWO and Sri Karim, Development Officer, APSMFC, Cuddapah. Further, the Vigilance Commissioner, in his proceedings, dated 27.12.2004 addressed a letter to the 1st respondent stating that an amount of Rs.14,33,315/- was unaccounted and therefore, he directed the Government to place the petitioner under suspension immediately for his alleged role in this case. So, there is sufficient material at this stage to show about

the involvement of the petitioner in this case. It is not as though the 1st respondent solely acted upon the proceedings of the 2nd respondent. It is also based upon the report submitted by the Vigilance Commissioner as well as the Vigilance Report, dated 28.5.2004. Therefore, it cannot be said that it was a total non-application of mind by the 1st respondent in issuing the suspension order. It is also not a case where no *prima facie* case is made out for the involvement of the petitioner in this case. In view of the serious allegations levelled against the petitioner, the 1st respondent passed the suspension order. The suspension is only a pending enquiry. The authority, who passed that order is not under challenge. Therefore, the suspension order does not suffer from any serious legal infirmities so as to call for interference by this Court.

The writ petition is devoid of merit and is accordingly dismissed. Any observation that has been made in this writ petition is only for the purpose of disposal of this petition. The Enquiry Officer, uninfluenced by any of the observations or findings recorded in this order shall proceed with the enquiry. In the circumstances of the case, there shall be no order as to costs.

(K.C. BHANU, J.)

15th March, 2005

bcj

To

1. The Principal Secretary to Government, Government of Andhra Pradesh, Minorities Welfare (M&R) Department, Secretariat Buildings, Hyderabad

2. The Vice Chairman and Managing Director, A.P. State Minorities Finance

Corporation Ltd., Hyderabad

3 Two C.Cs to the Government Pleader for Social Welfare, High Court Buildings, Hyderabad (OUT)

4 Two C.D. copies.

Note: Furnish copy in one week

b/o

bcj